

Guardianship Program Rules

406 Conflicts of Interest

406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

406.2 There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

406.3 A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. (Revised 1-9-12)

406.4 The role of a guardian is primarily that of a decision-maker and coordinator of services. The guardian or agency (or an entity in which a guardian has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval the guardian must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. (Revised 1-9-12)

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

406.6 A guardian shall not accept a gift from an incapacitated person or their estate other than ordinary social hospitality.

406.7 Payment of fees or other compensation for guardianship services by a party other than the incapacitated person is a potential conflict of interest which shall be fully disclosed.

406.8 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.